

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

MICHAEL IVY

PETITIONER

vs.

No. 1:08CV227-D-D

JACQUELYN BANKS AND
ATTORNEY GENERAL OF THE
STATE OF MISSISSIPPI

RESPONDENTS

ORDER OF DISMISSAL

On September 15, 2008, the Petitioner, Michael Ivy filed the petition for Writ of Habeas Corpus and supporting memorandum brief in this case. The Respondents subsequently filed the Motion to Dismiss on May 20, 2009 arguing that the Petition was barred by the one year statute of limitations. On June 22, 2009, Magistrate Judge Davis entered his Report and Recommendations regarding Respondents motion to dismiss, finding that Petitioner's habeas petition should have been filed on or before July 7, 2008. As noted above, the Petition was not filed until September 15, 2008, over two months after the statute of limitations ran. In addition, Petitioner has failed to comply with the court's order to acknowledge receipt of the Report and Recommendations.

Rule 41(b) of the Federal Rules of Civil Procedure provides that the court may dismiss a plaintiff's claims "[f]or failure of the plaintiff to prosecute or to comply with these rules or any order of court. . ." Fed. R. Civ. P. 41(b). Further, the court possesses the inherent authority to dismiss an action *sua sponte*, without motion by a defendant. *McCullough v. Lynaugh*, 835 F.2d 1126, 1127 (5th Cir. 1988).


Upon consideration of the file and records in this action, the Court finds that the Report and Recommendation of the United States Magistrate Judge dated June 22, 2009, was on that

date duly served by first class mail upon the petitioner, and the attorneys of record for the respondents; that more than ten days have elapsed since service of said Report and Recommendation, and that no objection thereto has been filed or served by said parties. The Court is of the opinion that the Report and Recommendation should be approved and adopted as the opinion of the Court. It is, therefore

ORDERED:

1. That the Report and Recommendation of the United States Magistrate Judge dated June 22, 2009, be, and it is hereby, approved and adopted as the opinion of the Court (docket entry # 12); and
2. That Respondents' Motion to Dismiss (docket entry # 11) be and hereby is granted.
3. That Petitioner's claims are hereby dismissed with prejudice.

THIS, the 10th day of August, 2009.



Senior Judge